

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CA07-856

March 12, 2008

HOME SERVICES OF CAMDEN, INC.	APPEAL FROM THE LONOKE
APPELLANT	COUNTY CIRCUIT COURT
V.	[CV-05-544]
THOMAS J. STARK and MIHAELA A.	HONORABLE LANCE L. HANSHAW,
STARK	JUDGE
APPELLEES	AFFIRMED

Appellant, Home Services of Camden, Inc., entered into a contract with appellees, the Starks, to level appellees' house in Cabot, Arkansas. Work on the house was started in October 2004 and was completed in approximately two weeks. Appellees were apparently initially satisfied with the work, but three to six months later, they began to notice problems. Appellees sued for breach of contract, alleging that appellant failed to levelize and stabilize the house, which resulted in significant damages. In a bench trial, the court found that appellant breached the contract and awarded damages in the amount of \$176,141, reduced by the \$35,000 amount owed by appellees under the contract. It also awarded costs of \$3,497. Appellant contends in this appeal 1) that the trial court erred in

finding that the contract was breached, and 2) that the damages awarded by the trial court were excessive. We affirm.

Standard of Review

The standard that we apply when we review a judgment entered by a circuit court after a bench trial is well established. We do not reverse such a judgment unless we determine that the circuit court erred as a matter of law or we decide that its findings were clearly against the preponderance of the evidence. *Heartland Community Bank v. Holt*, 68 Ark. App. 30, 3 S.W.3d 694 (1999). Disputed facts and determination of the credibility of witnesses are within the province of the circuit court, sitting as trier of fact. *Id.*

Breach of Contract

In a nutshell, appellant contends that it performed the work that it contracted to do, “that is to level the Stark house,” and that based “on almost all” of the testimony presented at trial, there was no breach of the contract. In making its argument that there was no breach of contract, appellant recounts the testimony of its owner, Fred Bradshaw, and Jim Venable, of Stew & Crew, both of whom actually testified as part of appellees’ case-in-chief. Appellant omits, however, other critical testimony presented by appellees to the trial court, *i.e.*, the testimony of two expert witnesses.

Aubrey Harris III, a structural consulting engineer, testified that when he inspected the house he found a total differential of four inches; that there was a difference in the elevations that he noticed just in walking in the house between October and the date he

actually took the elevations; that in his opinion the house is moving and that he did not believe the house was stabilized by the work done by Home Services; that soil or moisture in the soil is what causes a house to settle and that is what a company like appellant is supposed to fix; and that in his opinion, the resettling of the house caused the wrinkling of the roof, the malfunction of the windows, the plumbing pulling apart, the brickwork pulling apart, and the sunroom problems. He also stated that a drop of two or four inches from October 2004 until now (time of trial) was “a pretty quick drop.”

Mr. Blake Ronk, who works for Power Lift Foundation Repair, was also recognized as an expert. He testified that Power Lift prepared a bid on the house in question, but that the work was given to appellant. He stated that the first time he looked at the house was in October 2004; that he went back in September 2005; that he did not know the condition of the home left by appellant, but that he knew the condition when he returned to re-evaluate it; that it appeared to need work really badly; that it did not appear to be stable; that in regard to his work, it is his job to stabilize a structure and that is his primary objective; that in his opinion, appellees' house continued to settle; that it is different, worse, every time he looks at it; and that every time he goes he sees more physical damage.

The brief testimony from Jim Venable, who performed services on appellees' house, was that the work done by his group was performed after appellant had finished its project on the house, and that his group would not have done the work on the house had

they not believed that the house had been stabilized by appellant. Appellant did not present any witnesses.

It is the duty of the courts to enforce contracts as written and in accordance with the ordinary meaning of the language used and the overall intent and purpose of the parties. *Dugal Logging, Inc. v. Arkansas Pulpwood Co.*, 66 Ark. App. 22, 988 S.W.2d 25 (1999). Based upon our review of the evidence that was presented to the trial court, it cannot seriously be disputed that the primary object of the contract between these parties was for appellant to levelize and stabilize appellees' house. There was no clear error in the trial court's conclusion that that object was not accomplished and that the contract was thereby breached. As Mr. Ronk testified, the primary objective of this type work is to stabilize a house. Mr. Harris testified that in his opinion the house was not stabilized by the work done by appellant and that the subsequent resettling of the house was the cause of the problems that ensued.

Damages

Appellant also contends that the damages awarded were excessive and not its fault or responsibility. Again, there was no clear error.

Here, the following estimates of damages were admitted into evidence by the appellee, without objection: \$57,000 to replace brick; \$65,000 to repair damages to sunroom and house; \$5,800 to replace decking/shingles; \$5,100 to remove existing patio cover/reframe room; \$14,491 to rewire house; and \$28,650 to install all new water lines/sewer lines. The total amount of damages awarded by the trial court was \$176,141

to be reduced by the \$35,000 that appellee owed for the work done by appellant under the contract. Thus, there was no clear error in the amount of compensatory damages awarded in this case. We have previously discussed the expert testimony which was presented to the effect that the work done by appellant did not stabilize the house and that the subsequent resettling of the house was the cause of the problems that ensued.

Affirmed.

GLADWIN and VAUGHT, JJ., agree.